

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ROCKIE PICKENS,

PLAINTIFF

V.

NO. 4:03CV427-P-D

VIMAL POWELL,

DEFENDANT

ORDER TO SHOW CAUSE WHY COMPLAINT SHOULD NOT BE DISMISSED

A hearing pursuant to *Spears v. McCotter*, 766 F.2d 179 (5th Cir. 1985), was held in this *pro se* § 1983 conditions of confinement case on January 22, 2004. Magistrate Judge Jerry Davis ordered that process be issued against Vimal Powell, the sole defendant, who was employed by the Mississippi Department of Corrections (MDOC) at the time the acts occurred of which the plaintiff bases his complaint. The attorney for the MDOC, who was present at the *Spears* hearing, agreed to accept service of process for the defendant. On February 5, 2004, Leonard Vincent, the attorney for the MDOC, advised the court by letter that Mr. Powell was no longer employed by the MDOC and that therefore process could not be accepted on his behalf. The letter also listed the defendant's last known address. The plaintiff attempted to have process served on the defendant, without success.

The plaintiff moved for default judgment on May 24, 2004. The motion was denied on June 1, 2004, because the defendant had not been served. Service of process was again attempted on the defendant, but was again unsuccessful. Plaintiff again moved for default judgment on December 13, 2004. The motion was denied by Magistrate Judge Davis on January 11, 2005, because service of process had still not been accomplished.

Rule 4(m), Federal Rules of Civil Procedure, states that “[i]f service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court ... after notice to the plaintiff, shall dismiss the action without prejudice to that defendant” Since service of process has not been affected on the sole defendant in this case, plaintiff is hereby,

ORDERED:

to show cause why this case should not be dismissed in accordance with Rule 4(m), as specified above. Plaintiff shall have 30 days from the date of this order to file his response. The plaintiff is directed to acknowledge receipt of this order by signing the enclosed acknowledgment form and returning it to the court within 10 days of this date. He is warned that failure to comply with the requirements of this order may lead to the dismissal of his complaint under Rule 41(b), Federal Rules of Civil Procedure, for failure to prosecute and for failure to comply with an order of the court. He is further warned that failure to notify the court of any change in his mailing address may also lead to dismissal of the case.

THIS the 25th day of April, 2005.

/s/ W. Allen Pepper, Jr.
W. ALLEN PEPPER, JR.
UNITED STATES DISTRICT JUDGE